

Judge Robb, cont.

diana State Bar Foundation and a Senior Distinguished Fellow of the Indianapolis Bar Foundation. She is a frequent speaker on legal topics for attorneys, other judges, and professional, civic and community organizations.

Judge Robb was Founding Chair of Governor Bowen's Commission on the Status of Women; was a recipient of a 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University to honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award; the 2007 Warren G. Harding High School, Warren, Ohio, Distinguished Alumni

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anapolis Rotary Club.

She also has extensive international legal experience. In 2008, she co-founded the Legal Aid Centre of Eldoret, Kenya (LACE), which provides legal access to justice in the AMPATH medical center for its HIV/AIDS patients.

In 2011, Judge Riley traveled with the Washington, D.C.-based International Judicial Academy to The Hague, Netherlands, to observe the International Criminal Court and two International Criminal Tribunals that are hearing cases from Sierra Leone and the former Yugoslavia.

In 2012 she participated in the 3rd Sino-U.S. Law Conference at the National Judges College of the People's Republic of China, which oversees all aspects of that country's judicial training, placement and promotion.

In 2013, she lectured on judicial ethics at the Justice Academy of Turkey and in 2014 joined an Indiana University team of legal observers at the U.S. detention facility at Guantanamo Bay, Cuba.

Judge Riley is the mother of two sons. She was retained on the Court by election in 1996 and 2006 and later served as presiding judge of the court's Fourth District.

Award; the 2010 Indiana University Alumni Association President's Award, a 2010 Indiana Lawyer Distinguished Barrister Award, the 2011 Indianapolis Bar Association Women and the Law Committee's Antoinette Dakin Leach Award and the 2011 David Hamacher Award from the Appellate Practice Section of the Indiana State Bar Association.

Judge Robb chairs the Supreme Court Task Force on Family Courts and is involved in several projects to benefit the Indiana legal system. She also chaired the Supreme Court task force for the development of Trial Court Local Rules, has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest on Lawyer Trust Account) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and the Federal Advisory Committee for the Expediting of Federal Litigation.

Judge Robb authored "Reflections of Baseball, Life and the Law" in the Indi-

ana State Bar Association's journal, *Res Gestae* and "Running Bases, Winning Cases: Why the Grand Old Game of Baseball is like the legal profession" in the ABA's journal. She also authored a chapter on Supreme Court Justice Leonard Hackney in, *Indiana Supreme Court Justices*, and co-authored a chapter, "From Juvenile Courts to Family Courts," in *Essays on Indiana Legal History*.

In addition, she serves on the ABA Committee that accredits law schools and chaired the 2010 ABA's Appellate Judges Council-Appellate Judges Education Institute's national Summit for Judges, lawyers and Staff attorneys. Judge Robb is an elected member of the American Law Institute (ALI).

Judge Robb was retained on the Court of Appeals in 2000 and 2010, is married to a professor at Purdue University. Their son, a graduate of the United States Naval Academy, is a lieutenant on active duty in the United States Navy.

Attorneys for the Parties

Matthew J. McGovern graduated from the University of Evansville in 1994 and Notre Dame Law School in 1998. In law school, Mr. McGovern was on the Notre Dame Moot Court Team and was one of four students to deliver the 1998 Notre Dame Showcase Argument. While at Notre Dame, he was awarded the A. Harold Weber Moot Court Award, the Dean's Award for Outstanding Scholarship in Jurisprudence, and the George and Claudine Pletcher Senior Scholarship Award.

After graduating from law school, he was a clerk for the Honorable Margret G. Robb of the Court of Appeals of Indiana from July 1998 through August 1999 and was thereafter first deputy prosecutor for Floyd County, IN, through December 2000.

Since 2001, Mr. McGovern has been a solo practitioner of an appellate and consultation practice. He handles both criminal and civil appeals in the Court of Appeals and Indiana Supreme Court. His appeals have included criminal cases ranging from misdemeanors to murder, and civil cases, including personal injury, divorce, guardianship, annexation, and other cases.

His clients have included Indiana cities and towns, personal injury and family law attorneys, criminal defendants, and other private litigants. He has delivered several oral arguments before both the Indiana Supreme Court and the Court of Appeals. Additionally, he offers research and writing consultation services for personal injury and other attorneys.

Jesse Drum is from Burlington, KY. He earned a B.A. in English Literature from Northern Kentucky University in 2009 and graduated from Indiana University Maurer School of Law in Bloomington in 2013. During law school, he was a Notes and Comments Editor on the Indiana Law Journal. His student note, "Oh, it is you, is it?" *Closing the Door on Reasonable Resistance to Unlawful Police Entry in Indiana*, was published in the ILJ. Jesse joined the Office of the Indiana Attorney General as a law clerk in Criminal Appeals in May 2012. In February 2014, he was promoted to the position of Deputy Attorney General in the same division. Jesse spends most of his free time working on his new house. He occasionally golfs.

SYNOPSIS

On April 4, 2014, a jury convicted Katyun Marsh of the murder of Angela Dixon. Two eyewitnesses, who were with Marsh at the time of the killing, testified that Marsh shot Dixon in the face after an argument over a small amount of money.

After the murder, police officers found Marsh, took him to the station, and conducted an interview. During the interview, a detective asked Marsh about a conversation Marsh had with his cousin, Alisha Robinson. The following exchange took place:

Detective: I want to hear about this conversation you had where you were upset and crying and you told her that you got involved in something you shouldn't have got involved in, and you (unintelligible) and you fell down, and you curled up crying like into a ball, and just very upset.

Marsh: (Unintelligible)

Detective: I'm just telling you what she told one of the investigators.

Video of this interview, including this portion, was played for the jury at trial. Marsh's lawyer objected to this portion of the video being introduced as evidence, arguing that the detective's statement was hearsay. The trial court overruled the objection.

Hearsay is an out-of-court statement used to prove the truth of the matter asserted. Generally, hearsay cannot be introduced as evidence. Marsh argues that the statement is hearsay because his cousin made the statement out-of-court and the prosecution was using this statement to prove that Marsh actually did what his cousin said he did – get upset in front of her.

Marsh argues that this was damaging evidence against him because it made it look as though he admitted to his cousin that he had committed the murder.

In some cases, Indiana Courts have found that statements were not hearsay because they were largely designed to elicit a response from a defendant.

The State argues that, because the investigator was only bringing up Robinson's statement to see what Marsh's response would be, the statement is not hearsay. This is because it

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Court of Appeals of Indiana

*Hearing oral argument at
Culver Academies, Culver
Thursday, March 12, 2015 @ 6:30 p.m.*



Katyun Marsh v. State

82A01-1405-CR-233

*On Appeal from Vanderburgh Superior Court
The Honorable David D. Kiely, Judge*

Synopsis, cont.

is not the statement itself that was the true evidence but, rather, Marsh’s response to the statement.

Marsh further argues that his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution were violated. This clause provides that all defendants in criminal prosecutions shall have the right to confront the witnesses against them.

Alisha Robinson was not in court during Marsh’s trial, so Marsh could not cross-examine her about the statement she made to the investigator.

The United States Supreme Court has held that a hearsay statement from someone who is not in court cannot be introduced as evidence if it is “testimonial.” There are various definitions of what kinds of statements are testimonial, but it is clear that formal statements to police officers about a crime, such as affidavits or depositions, fit within the definition.

Marsh argues that Robinson’s statement to the investigator was testimonial

because, when she spoke to the investigator, she could reasonably expect that her statement could be used against Marsh at trial. Therefore, Marsh argues that he should have been allowed to confront Robinson in court and question her about her statement. Therefore, the primary questions before the Court are:

- 1. Was Alisha Robinson’s statement to the investigator hearsay?
- 2. If it was, was it “testimonial,” meaning that Marsh had a Sixth Amendment right to confront Robinson at trial?

Marsh makes other arguments regarding the length of his sentence that may come up during argument.

Marsh was sentenced to 60 years in the Department of Correction. Under Indiana Appellate Rule 7(B), appellate courts may revise a sentence if it is deemed inappropriate in light of the nature of the offense and the character of the offender.

Marsh argues that his sentence is inappropriate. He also argues that the trial court considered improper factors when sentencing him.

Notable quotations about justice and the courts

The complete independence of the courts of justice is peculiarly essential in a limited Constitution.

- Alexander Hamilton, Federalist 78

It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.

- Chief Justice John Marshall

Whatever disagreement there may be as to the scope of the phrase "due process of law" there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard.

- Justice Oliver Wendell Holmes, Jr.

The ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it.

- Justice Felix Frankfurter

Law matters, because it keeps us safe, because it protects our most fundamental rights and freedoms, and because it is the foundation of our democracy.

- Justice Elena Kagan

Restriction on free thought and free speech is the most dangerous of all subversions. It is the one un-American act that could most easily defeat us.

- Justice Thurgood Marshall

The day you see a camera come into our courtroom, it’s going to roll over my dead body.

- Justice David Souter

Judge Baker, cont.

In 2011 he joined the Board of Trustees of Garrett-Evangelical Theological Seminary in Evanston, IL, where he serves on the board’s Academic Affairs committee.

Judge Baker was retained by election in 1992, 2002 and 2012. He and his wife have five children and – so far – nine grandchildren.

Fun Facts about the Court

- The Court of Appeals observed its centennial anniversary in 2001.
- The Court hears cases in three-judge panels that rotate three times per year. Cases are never assigned to a single judge, and all cases are randomly assigned.
- Including judges serving senior terms, 135 judges have served the Court since its inception. Their photos are displayed against the north wall of the Statehouse on the fourth floor. Judge James B. Black (1838-1916) was the Court’s first chief judge.
- Because the Indiana Constitution provides “an absolute right to one appeal,” the Court of Appeals considers more than 2,000 cases each year. The Indiana Supreme Court need not consider every appeal, so it decides about 100 cases per year.
- Eight women and three African Americans have served on the Court. Current Chief Judge Nancy H. Vaidik is the Court’s second female chief judge.
- The court decides most cases without holding oral argument. In 2013, for example, the court issued 2,058 majority opinions and heard 71 oral arguments.
- The court hears and decides about twice as many criminal cases as civil cases each year.
- The Court of Appeals affirmed trial court decisions in 80 percent of its cases in 2013. By case type, the affirmation rate was 86 percent of criminal cases; 91 percent of post-conviction relief petitions; and 63 percent of civil cases.



The Honorable Patricia A. Riley
Jasper County

Patricia A. Riley was named to the Court of Appeals of Indiana by Governor Evan Bayh in January of 1994. A native of Rensselaer, IN, Judge Riley earned her bachelor’s degree from Indiana University-Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974.

Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993. She is a former associate professor at St. Joseph’s College in Rensselaer and currently an adjunct professor at the Indiana University School of Law-Indianapolis.

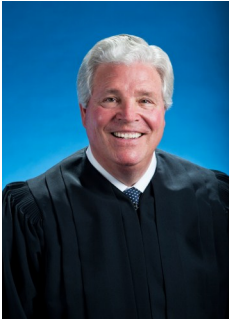
Judge Riley’s legal memberships include the Indianapolis Bar Association, the Marion County Bar Association, and the Indiana State Bar Association, including co-chair of the ISBA’s Racial Diversity in the Profession Section; member, Women in the Law Committee; and member, Committee on Improvements in the Judicial System.

Judge Riley is the former chair of the Appellate Practice Section of the American Bar Association, and a member of the ABA’s Judicial Division International Courts Committee. She is a member of the Indiana Judges Association and the Board of Directors of the National Association of Women Judges.

Judge Riley’s civic associations include being on the Board of Directors of the Greater Indianapolis Health Foundation, Board of Directors of Global Peace Initiatives, Board of Directors and Treasurer of the Indiana University School of Law–Indianapolis Alumni Association, and a member of the Indi-

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Today’s Panel of Judges



The Honorable John G. Baker
Monroe County

John G. Baker was named to the Court of Appeals in 1989, which makes him the longest-serving member on the current Court. He has served as Presiding Judge of the Court’s First District, which covers all of southern Indiana, and as Chief Judge of the Court from 2007-2010.

Judge Baker grew up along the Ohio River in Aurora, IN, but attended high school at Culver Military Academy in northern Indiana. He studied history at Indiana University-Bloomington, and later received his law degree from Indiana University School of Law-Bloomington.

He practiced law in Monroe County for many years before joining the Monroe County bench as first a county and later a Superior Court Judge. Diligently, he handled more than 15,000 cases in 13 ½ years on Monroe County benches, and has written more than 4,000 majority opinions for the Court of Appeals.

Judge Baker is greatly interested in the history, structure and organization of Indiana’s judicial branch of government. He regards Indiana judges not as remote figures who conduct abstract arguments, but as people fully engaged in the life of the law and their communities.

He has taught in college and law school and is active in local, state and national bar associations. In 2013, Judge Baker retired after 33 years of teaching at the School of Public and Environmental Affairs, Indiana University-Bloomington. He continues to teach during the Spring semester at the McKinney School of Law.

Judge Baker’s many community activities include his church, the YMCA and the Boy Scouts (where he attained Eagle Scout status as a youth).

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The Honorable Margret G. Robb
Tippecanoe County

Margret G. Robb was appointed to the Court of Appeals of Indiana in July 1998 by Governor Frank O’Bannon. She holds a B.S. and an M.S. in Business Economics from Purdue University, a Magna Cum Laude J.D. from Indiana University Robert H. McKinney School of Law and is a graduate of the Graduate Program for Indiana Judges. In 2011 she began a three year term as chief judge; the first woman to hold that position in the Court’s more than 100 year history.

Prior to her appointment to the Court, Judge Robb was, for 20 years, engaged in the general practice of law in Lafayette, and served as a Chapter 11, 12 and a standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana. She was a registered family and civil mediator and served as a Tippecanoe County Deputy Public Defender.

She has been an officer of the Indiana State Bar Association, the Fellows of the Indiana State Bar Foundation, Tippecanoe County Bar Association, National Association of Women Judges, the Indiana University School of Law- Indianapolis Alumni Association and the Bankruptcy Section of the Indiana State Bar Association.

She has also been a Board member of the Appellate Judges Council of the American Bar Association, the Indianapolis Bar Association, the Indianapolis Bar Foundation, the Senior Council Section of the Indianapolis Bar Association, the Appellate Practice Section of the Indiana State Bar Association and the Appellate Judges Education Institute.

She was the moderator for the 2005-2006 and Chair for the 2006-2007 Indianapolis Bar Association’s Bar Leader Series, and is a member of the American Bar Foundation, American Judicature Society, a Master Fellow of the In-

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